

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RAMON MURILLO,

Plaintiff,

vs.

P. FLOURNOY, et al.,

Defendants.

CASE NO. 11cv1687 BEN (BGS)

**ORDER READOPTING REPORT  
AND RECOMMENDATION  
OVER PLAINTIFF'S  
OBJECTIONS**

On February 27, 2013, the Court adopted in full the Report and Recommendation (“R&R”) of the Magistrate Judge in this action and granted Defendants’ Motion to Dismiss. (ECF No. 54.) Plaintiff’s objections to the R&R were filed on March 4, 2013. Plaintiff is a prisoner proceeding *pro se* and *in forma pauperis*. He signed and dated the objections February 15, 2013 and purportedly gave the document to a correctional officer on February 18, 2013, which was the deadline for filing objections. Under the prisoner mailbox rule, Plaintiff’s objections were timely. *See Douglas v. Noelle*, 567 F.3d 1103, 1106-07 (9th Cir. 2009).

Before the Court could address these objections, Plaintiff filed an appeal to the Ninth Circuit. (ECF No. 60.) Ordinarily, the filing of a notice of appeal divests a district court of further jurisdiction over the case. *See Pope v. Sav. Bank of Puget Sound*, 850 F.2d 1345, 1347 (9th Cir. 1988). However, when the appeal is from an

1 unappealable order, the district court may disregard the purported notice of appeal  
2 and proceed with the case. *See Estate of Connors v. O'Connor*, 6 F.3d 656, 658 (9th  
3 Cir. 1993).

4 Plaintiff's appeal was premature. The Magistrate Judge's R&R, which the  
5 Court adopted in full, gave Plaintiff leave to amend some claims. Because there was  
6 no final order in this case, the Court retains jurisdiction and is free to consider the  
7 objections submitted by Plaintiff. The Court has reviewed Plaintiff's objections.  
8 Finding them without merit, the Court modifies its order of February 27, 2013 to  
9 **READOPT** the Report and Recommendation of the Magistrate Judge. Plaintiff is  
10 granted **45 days** in which to file and serve an amended complaint which addresses  
11 the deficiencies of pleading for claims which Plaintiff has been granted leave to  
12 amend.

13 **IT IS SO ORDERED.**

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15 DATED: March 19, 2013

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18 Hon. Roger T. Benitez  
19 United States District Judge  
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